

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

10,942

**FILE:** B-193963

**DATE:** August 6, 1979

**MATTER OF:** Baker Manufacturing Company, Inc.

CNG02424

**DIGEST:**

1. Nonmandatory user of FSS contract is free to use multiple-award FSS sources in lieu of single source contracts where only particular item on multiple-award schedule meets its minimum needs.
2. Protester's disagreement with agency's decision establishing MOL's for multiple-award contracts is not basis to disturb decision since protester has not shown that agency acted unreasonably or in violation of regulation.

Baker Manufacturing Company, Inc. (Baker), protests any award for wall units under solicitation No. FEFP-S1-0039-N-6-14-78 issued by the General Services Administration, Federal Supply Service (GSA). *AGC 00043*  
The protester contends that negotiated multiple-award schedules should not be used to procure these wall units when there are competitive (single source) schedules available for almost the identical item. In addition, the protester contends that the use of a \$100,000 maximum order limitation (MOL) for these multiple award schedules is too high and should be reduced to something less than \$25,000. For the reasons set out below, the protest is denied.

Baker currently holds the competitively awarded (single source) contract for Federal Supply Schedule (FSS) 71 Part VII B (Metal Frame Dormitory Furniture) and is protesting the use in this procurement of multiple-award schedule contracts for FSS 71 Part XIX (Contemporary Wall Units for Office Use). In Baker's opinion, the purchasing agency--the Air Force--is misusing the multiple-award schedule

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[ALLEGATION THAT Agency MISUSES Multiple-Award Schedule]

Part XIX by procuring wall units for use as dormitory furniture which Baker believes are intended to be used exclusively as office furniture. In other words, Baker believes that any purchase order for these wall units should be made under Part VII B because not only is the furniture available under that Part designed specifically for dormitory use, but the contract for that Part was also awarded competitively thereby guaranteeing better quality and better price.

While conceding that there is a need to introduce and test new styles, techniques, and materials, Baker maintains that this should not be done at the expense of competitively awarded contracts which provide similar items. Baker argues, therefore, that if the Government intends to purchase the wall units available under Part XIX, these procurements should be treated, if anything, on the scale of a small demonstration project with the MOL for that Part set at something less than \$25,000 rather than at the \$100,000 MOL established for the competitively awarded contracts such as under FSS 71, Part VII B. Moreover, Baker contends that both those who hold the contracts under Part XIX and those who might purchase wall units under that part should be cautioned that Part XIX is intended exclusively for office use and the sale of these units for other than office use may require termination of the contract. Finally, Baker argues that all multiple-award contracts which offer wall units for housing purposes and which also conflict with competitively awarded (single source) contracts offering similar items should be restricted to test level MOL's of \$5,000 for single items and \$10,000 for multiple items.

GSA, however, disagrees with Baker's various contentions. It points out that the Department of Defense (DOD) is not a mandatory user of FSS 71, Part VII B. GSA argues, therefore, that DOD has the option of purchasing the wall units from either Part VII B or Part XIX depending upon its needs. As to determining what those needs are, GSA argues that an agency is accorded a reasonable range of judgment and discretion and that as a general rule our Office will not question the agency's determination

unless there is a clear showing that the determination has no reasonable basis. In light of this, GSA contends that the burden is on Baker to prove affirmatively that the Air Force erred in its determination of its minimum needs. In GSA's opinion, Baker has failed to meet this burden since it has not presented any information contradicting the Air Force's decision to purchase wall units from Part XIX.

Regarding Baker's contention that the MOL on Part XIX is too high, GSA maintains that the MOL's for both Part VII B and Part XIX were set in accordance with the applicable regulation. It notes that there is no provision, as Baker suggests, for establishing a MOL on the basis of whether the contract is going to be awarded competitively--that is, single source--or as a multiple award. Moreover, GSA believes that Baker's test idea is impractical since the Government would lose the benefits of the discount structure and as a result lose money.

Essentially, Baker's protest questions the use of multiple-award contracts when there are single source contracts available which offer almost the identical item. In that type of situation, Baker believes that the procuring agency should have to purchase the item from the holder of the single source contract.

We think the real question here is whether the Air Force needs wall units designed to specifications established for dormitory furniture or for those established for office furniture, rather than the Air Force's status as a FSS user. We believe this is so because even a mandatory user is not required to purchase a particular item under the FSS where it does not meet its needs. In this connection, it is well settled that the determination of the minimum needs of an agency is properly the responsibility of the contracting agency. Harris Data Communication, Inc., B-192384, January 8, 1979, 79-1 CPD 7; Quest Electronics, B-193541, March 27, 1979; 79-1 CPD 205. Moreover, we have recognized that Government procurement officials who are familiar with the conditions under which supplies and equipment have been and will be used are generally in the

best position to know what those minimum needs are. GTE Sylvania Incorporated, B-192985, January 25, 1979, 79-1 CPD 53. Thus, our Office will not question an agency's determination of its minimum needs unless there is a clear showing that the determination has no reasonable basis. Quest Electronics, supra; Dictaphone Corporation, B-192305, December 22, 1978, 78-2 CPD 431. The burden of proof for such a showing rests upon the protester. Bell & Howell Corporation; Realist, Inc., B-193301, February 6, 1979, 79-1 CPD 82.

The critical factor is not the general purpose for which the wall units are designed, as Baker contends, but whether only those available under Part XIX meet the Air Force's minimum needs. The Air Force has determined that only the wall units available under Part XIX satisfy its minimum needs. Baker has not presented any evidence which shows that the Air Force's determination of its minimum needs is unreasonable. Therefore, the Air Force can purchase wall units designed for offices and use them as dormitory furniture without violation of Baker's FSS contract for dormitory wall units. However, it should be pointed out that once a nonmandatory user elects to use the Federal Supply Schedule it may not purchase any item available on the schedule, but only the lowest priced item which meets its minimum needs.

Baker has also argued that any multiple-award contract which offers wall units that conflict with single source contracts offering similar items should be restricted to test level MOL's of \$5,000 for single items and \$10,000 for multiple items. However, Baker has not shown that in establishing the MOL's in question GSA has acted unreasonably or in violation of any regulation. Under these circumstances, we see no basis for questioning the MOL size. See Idaho Forest Industries, Inc., B-189676, December 27, 1977, 77-2 CPD 504.

The protest is denied.

  
For the Comptroller General  
of the United States